

1 AN ACT relating to stream and wetland mitigation, making an appropriation
2 therefor, and declaring an emergency.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
5 READ AS FOLLOWS:

6 *As used in Sections 1 to 7, 15, and 16 of this Act:*

- 7 *(1) "Acquire" to come into possession of by sale, trade, exchange, or other*
8 *transaction;*
- 9 *(2) "Aquatic resources" means the ecological functions, services, and values*
10 *provided by the waters of the United States that are subject to compensatory*
11 *mitigation under 33 U.S.C. secs. 1251 et seq. and 33 U.S.C. secs. 401 and 403;*
- 12 *(3) "Compensatory mitigation" means the restoration, establishment, enhancement,*
13 *or preservation of the jurisdictional waters of the United States and their aquatic*
14 *habitats that is required as a condition of a permit issued by the United States*
15 *Army Corps of Engineers for the purposes of offsetting unavoidable adverse*
16 *impacts which remain after all appropriate and practicable avoidance and*
17 *minimization has been achieved;*
- 18 *(4) "Compensatory mitigation credit" means a non-tangible ecosystem service asset*
19 *comprising a unit of measure that represents the accrual or attainment of aquatic*
20 *functions or improvements;*
- 21 *(5) "Compensatory mitigation project" means the work associated with*
22 *implementing compensatory mitigation as required by a Department of Army*
23 *(DA) permit or by a mitigation bank or an in-lieu fee program which results in*
24 *the ultimate production of mitigation credits, including but not limited to property*
25 *acquisition, design, construction, and monitoring;*
- 26 *(6) "Compensatory mitigation site" means the location where compensatory*
27 *mitigation is implemented by the permittee, mitigation bank, or in-lieu fee*

1 program in order to meet the obligations imposed by the United States Army
2 Corps of Engineers;

3 (7) "Conservation easement" has the same meaning as in KRS 382.800;

4 (8) "DA permit" means Department of Army permit;

5 (9) "Design-bid-build" has the same meaning as in Section 11 of this Act;

6 (10) "Design-build" has the same meaning as in Section 11 of this Act;

7 (11) "Design-build mitigation" means a project delivery method in which the
8 Commonwealth enters into a single contract for design and construction of a
9 compensatory mitigation project on a property that the Commonwealth either
10 owns in fee or possesses a conservation easement in its favor for:

11 (a) A stream;

12 (b) A wetland; or

13 (c) Both streams and wetlands;

14 (12) "FILO" means the in-lieu fee program operated by the department in
15 accordance with the in-lieu fee program instrument approved by the United
16 States Army Corps of Engineers and this chapter;

17 (13) "Foreign entity" has the same meaning as in KRS 14A.1-070;

18 (14) "Full delivery compensatory mitigation" means a performance contract for
19 construction management services where the Commonwealth procures and
20 obtains the production and delivery of mitigation credits from a vendor who
21 acquires the land and develops or preserves a stream or wetland mitigation site
22 approved by the United States Army Corps of Engineers, and upon the release of
23 mitigation credits, the vendor:

24 (a) Donates the property to the Commonwealth;

25 (b) Provides a conservation easement in favor of the Commonwealth; or

26 (c) Donates the property, if approved by the United States Army Corps of
27 Engineers, to a third party holder for purposes of site protection;

- 1 (15) "In-lieu fee program" means a program involving the restoration, establishment,
2 enhancement, and preservation of aquatic resources through funds paid to a
3 governmental or non-profit natural resources management entity to satisfy
4 compensatory mitigation requirements for Department of Army permits;
- 5 (16) "In-lieu fee program instrument" or "program instrument" means the legal
6 document for the establishment, operation, and use of an in-lieu fee program;
- 7 (17) "Mitigation bank" means a site, or a suite of sites, where aquatic resources are
8 restored, enhanced, and preserved for the purpose of providing compensatory
9 mitigation for impacts authorized by DA permits;
- 10 (18) "Performance-based" with respect to a contract means the inclusion of or
11 reliance on both quantitative and qualitative indicators or measures that
12 demonstrate acceptable completion of tasks or deliverables;
- 13 (19) "Person" has the same meaning as in KRS 151.100;
- 14 (20) "Request for proposal" has the same meaning as in Section 11 of this Act;
- 15 (21) "Responsible bidder" has the same meaning as in KRS 45A.070;
- 16 (22) "Service area" means a defined geographic area approved by the United States
17 Army Corps of Engineers within which mitigation providers including in-lieu fee
18 mitigation and mitigation bank sponsors may provide compensatory mitigation
19 for aquatic impacts as designated in the program instrument;
- 20 (23) "Site protection instrument" means a written description of the legal
21 arrangements, including site ownership, management, and enforcement of any
22 use restrictions that will be used to ensure the long-term protection of the
23 compensatory mitigation project site; and
- 24 (24) "USACE" means the United States Army Corps of Engineers.

25 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
26 READ AS FOLLOWS:

- 27 (1) Upon approval of the commission, the department may acquire, as necessary for

- 1 the construction, operation, and protection of a compensatory mitigation project,
2 with payment being made solely from funds under Section 16 of this Act:
- 3 (a) Lands or interests therein including subsurface mineral rights;
4 (b) Structures or other surface property;
5 (c) Rights-of-way, franchises, or other easements; and
6 (d) Compensatory mitigation credits.
- 7 (2) Notwithstanding KRS Chapters 45 and 45A and except when an acquisition is
8 made under full delivery compensatory mitigation under subsection (2) of Section
9 3 of this Act, title to any real property or interests therein shall be made in the
10 name of the Commonwealth and for use and benefit of the department. All
11 property acquisitions made pursuant to Sections 1 to 7 of this Act shall be only
12 for the purposes stated in, and paid out of funds from, Section 16 of this Act.
- 13 (3) The acquisition price shall be subject to the approval of the commission, and
14 interests in real property may be purchased at an amount greater than the
15 appraised value when a comparable sales comparison or market approach
16 appraisal method is used to determine the property interest's value.
- 17 (4) The department shall have the authority to acquire lands, rights, rights of way,
18 franchises, easements, or other property from any person, for the purposes of
19 performing compensatory mitigation and expending funds from Section 16 of
20 this Act, by condemnation or by the exercise of eminent domain if:
- 21 (a) There is a severance between surface ownership and subsurface mineral
22 rights of the property to be acquired;
23 (b) The mineral rights have not been exercised or acted upon within one
24 hundred (100) years of the commission's approval of the acquisition;
25 (c) The owner or owners are unknown, absent, or no longer in legal existence;
26 (d) The acquisition is deemed necessary for the construction, operation, or
27 protection of a compensatory mitigation project including the restoration of

1 wetlands or streams; and

2 (e) The proceedings are conducted in accordance with KRS 416.540 to 416.760.

3 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) Notwithstanding any provision of law to the contrary, the department may use
6 design-build or design-bid-build construction methodology as an alternative
7 method of procuring construction contracting for compensatory mitigation
8 projects and the production of compensatory mitigation credits, solely expending
9 funds from Section 16 of this Act, and shall not be subject to title, acquisition
10 requirements, and other restrictions and limitations under KRS Chapters 45 and
11 45A.

12 (2) Notwithstanding any provision of law to the contrary, the department may utilize
13 full delivery compensatory mitigation as an alternative method of procuring
14 construction contracting for compensatory mitigation projects to produce or
15 purchase compensatory mitigation credits and shall be exempt from title,
16 acquisition requirements, and other restrictions and limitations pursuant to KRS
17 Chapter 45 and 45A. The department shall be authorized to approve the transfer
18 of title or to take fee simple title to any property, including the site protection
19 instrument or any other interests or rights that is a part of the compensatory
20 mitigation site, from the vendor upon:

21 (a) Approval of the site protection instrument by the department and USACE;
22 and

23 (b) Project completion and the production of compensatory mitigation credits.

24 (3) If any work, tasks, or deliverables for a compensatory mitigation project cannot
25 be fulfilled under this section, the department may procure the same from an
26 existing compensatory mitigation bank if:

27 (a) The procurement is approved by USACE; and

- 1 (b) The compensatory mitigation credits purchased offset impacts from a
2 compensatory mitigation project that is:
3 1. Approved by USACE; and
4 2. Located within the existing mitigation bank's service and hydrologic
5 area.
- 6 (4) All full delivery compensatory mitigation procurement shall be performance-
7 based with payment conditioned on successful completion of work, tasks, or
8 deliverables as defined by the contract. The contract shall include:
9 (a) Commencement and completion dates for work, tasks, or deliverables;
10 (b) Remittance dates and the manner of payment for the work, tasks, or
11 deliverables, which may include a provision for withholding or delaying a
12 percentage of the contract price or a fixed amount until a specified date or
13 until certain work, tasks, or deliverables are completed by the contractor
14 and accepted by the department;
15 (c) A site protection instrument approved by USACE that covers the entire
16 compensatory mitigation site and runs with the land in perpetuity; and
17 (d) A right for the vendor to transfer the site protection instrument,
18 conservation easement, or fee simple title to the property of the
19 compensatory mitigation site after the site protection instrument is approved
20 by department and USACE but before commencing construction on the
21 compensatory mitigation site.

22 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
23 READ AS FOLLOWS:

24 The following requirements shall apply to design-build, design-bid-build, and full
25 delivery compensatory mitigation procurement methodologies:

26 (1) When the contract provides for partial payment based on the completion of work,
27 a department representative supervising the project shall certify, each time a

1 payment comes due, the amount of work completed for which payment is to be
2 made;

3 (2) When the work has been fully completed, the department representative
4 supervising the project shall certify the final cost of work in a detailed and
5 itemized statement to the department, and the department shall review the
6 statement for correctness;

7 (3) Once the project cost has been certified and reviewed in accordance with
8 subsection (2) of this section, the department shall certify the final project cost to
9 the Finance and Administration Cabinet and the cabinet shall draw a warrant for
10 the amount due;

11 (4) Once a contract is awarded to a vendor:

12 (a) The contractor or vendor shall not deviate from the contract's provisions,
13 plans, or specifications without first having obtained written authorization
14 from the department; and

15 (b) No agency of the Commonwealth of Kentucky, including the department,
16 the Finance and Administration Cabinet, and the State Treasurer, shall
17 assume liability or make payment for any unauthorized work performed by
18 the contractor; and

19 (c) If the contractor or vendor fails to perform any of work, tasks, or
20 deliverables in the contract, the department may:

21 1. Cancel the contract; and

22 2. Re-award the contract to a qualified contractor without advertisement
23 as provided in subsection (5) of this section, but only if the new
24 contractor can perform the work at or below the original price;

25 (5) Solicitation of the bid and public notice shall be advertised by publication
26 pursuant to KRS Chapter 424. The department may contract for the performance
27 of a compensatory mitigation project via:

- 1 (a) Competitive sealed bidding;
 2 (b) Competitive negotiation; and
 3 (c) Noncompetitive negotiation;
 4 (6) The department may:
 5 (a) Determine the type of credits, restoration, improvement, and property
 6 interest to be included in the contract for a compensatory mitigation
 7 project;
 8 (b) Advertise and receive bids for only the types of credits, restoration,
 9 improvement, or property interest to be included in the contract;
 10 (c) Adopt rules and promulgate administrative regulations to:
 11 1. Implement the FILO program; and
 12 2. Establish procedures, forms, and requirements for procurement,
 13 adjudication of disputes, and collection of fines pursuant to Sections 7
 14 and 17 of this Act, and any other matters to implement Sections 1 to 7
 15 of this Act; and
 16 (d) Investigate the financial status, experience, responsibility, capacity,
 17 previous record of experience, resource sufficiency including required plant
 18 and equipment, and any other pertinent fact necessary to determine whether
 19 the bidder is a responsible bidder.

20 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
 21 READ AS FOLLOWS:

- 22 (1) For compensatory mitigation projects designed to produce compensatory
 23 mitigation credits procured through a request for proposals, at a minimum a
 24 proposal shall include:
 25 (a) Identification of the service area where compensatory mitigation credits are
 26 to be produced;
 27 (b) The amount of compensatory mitigation credits to be produced;

1 (c) A timeline for the needed production of compensatory mitigation credits;

2 (d) The estimated price for the compensatory mitigation credits; and

3 (e) The required experience and credentials of the vendor.

4 (2) In order to evaluate each proposal, the department shall develop criteria and a
5 method of scoring each submitted proposal. Each submitted proposal shall have
6 the individual scores for the criteria clearly marked on the scoring sheet, and the
7 department shall calculate a final grade which reflects the bidder's placement in
8 the hierarchy of submitted proposals. The department may pre-qualify suppliers
9 of particular types of services, products, supplies, or construction as responsible
10 bidders.

11 (3) All bids shall be opened publicly, at a time and place designated in the invitation
12 for bids. Each bid, together with the name of the bidder, shall be recorded and
13 open to public inspection.

14 (4) The contract shall be awarded to the bidder who receives the highest grade out of
15 all the proposals submitted for the request for proposals. If the department deems
16 it advisable, the department may require bonds or any other form of security or
17 financial assurance of any contractor to secure the performance of the contract.
18 The provisions of KRS 45A.015 shall apply to all contracts issued under this
19 section.

20 (5) The department may reject any bid when it finds it is in the best interest of the
21 state to do so. If all bids for a request for proposal are rejected, the department
22 may advertise for new bids or may engage a different method of procurement if
23 the department deems that it is prudent and necessary to obtain the required
24 work.

25 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
26 READ AS FOLLOWS:

27 (1) For the purposes of this section, "protest" means a written objection by an

1 interested party to any of the following:

2 (a) A solicitation or request by the department for offers for a contract or for
3 procurement of property or services;

4 (b) The cancellation of the solicitation or other request;

5 (c) An award or proposed award of a contract; or

6 (d) The termination or cancellation of an award of the contract if the written
7 objection contains an allegation that the termination or cancellation is
8 based in whole or in part on improprieties concerning the award of the
9 contract.

10 (2) The commissioner or designee shall have the authority to determine protests and
11 other controversies of actual or prospective bidders or offerors in connection with
12 the soliciting or awarding a contract.

13 (3) Any actual or prospective bidder, offeror, or contractor who is aggrieved in
14 connection with the soliciting or awarding of a contract may file a protest or
15 notice of other controversy with the commissioner or designee. Protests or notices
16 of other controversy shall be deemed complete and actionable when the protest or
17 notice:

18 (a) Is written and physically delivered to the department;

19 (b) Is concise and logically presented to facilitate review by the department;

20 (c) Contains all relevant information as prescribed by the department; and

21 (c) Has been filed not later than ten (10) calendar days after the facts giving
22 rise to the protest are known or should have been known.

23 (4) A protest or notice filed in accordance with the requirements of subsection (3) of
24 this section shall suspend the solicitation or award involved until the
25 commissioner or designee makes a written and adequately supported
26 determination that continuation of the procurement is necessary to protect
27 substantial interests of the Commonwealth.

1 (5) The commissioner promptly shall issue a decision in writing. A copy of the
 2 decision shall be mailed or otherwise furnished to the aggrieved party and shall
 3 state the reasons for the action taken.

4 (6) The commissioner's or designee's decision shall:

5 (a) Be final and conclusive;

6 (b) Be entitled to the presumption of correctness with respect to any controversy
 7 arising under, or in connection with, the solicitation or award of a contract;
 8 and

9 (c) Not be disturbed unless the decision was procured by fraud or the findings
 10 of fact by the commissioner or designee do not support the decision.

11 (7) Any actual or prospective bidder who is aggrieved by the final decision of the
 12 commissioner or designee may appeal to the Franklin Circuit Court within
 13 fifteen (15) calendar days of the issuance of the decision.

14 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO
 15 READ AS FOLLOWS:

16 (1) No contract for building, construction, or any other type of work on a
 17 compensatory mitigation project, shall be awarded by the department or any other
 18 agency of the Commonwealth to:

19 (a) Any person until that person assures, by affidavit, that all contractors and
 20 subcontractors employed or that will be employed under the provisions of
 21 the contract are covered by the Commonwealth's unemployment insurance
 22 and workers' compensation insurance requirements pursuant to KRS
 23 Chapter 341 and 342, respectively; or

24 (b) A foreign entity unless that foreign entity, on record with the Secretary of
 25 State, holds a certificate of authority or a statement of foreign qualification
 26 and is in good standing pursuant to KRS 14A.9-010.

27 (2) Any person who fails to comply with the requirements of subsection (1) of this

1 section during the term of the contract, upon a finding by a court of competent
2 jurisdiction, shall be fined the greater amount of either:

3 (a) Four thousand dollars (\$4,000); or

4 (b) An amount equal to the sum of the unemployment insurance claims for
5 which no wages were reported as required by KRS Chapter 341 and
6 uninsured and unsatisfied claims brought under the provisions of KRS
7 Chapter 342.

8 (3) The penalty imposed under this section shall be enforced by the department in
9 Franklin Circuit Court. Proceeds from penalties imposed and collected under this
10 section shall be deposited into the fund established under Section 16 of this Act
11 and expended solely for the purposes of the fund stated therein.

12 (4) Nothing contained in this section shall be construed to impair any right of action
13 under KRS Chapters 341 and 342.

14 ➔Section 8. KRS 45.750 is amended to read as follows:

15 (1) As used in KRS 45.760 to 45.810:

16 (a) "Committee" means the Capital Projects and Bond Oversight Committee;

17 (b) "Capital construction item" means:

18 1. The construction, reconstruction, acquisition, and structural maintenance
19 of buildings;

20 2. The installation of utility services, including roads and sewers;

21 3. The acquisition or improvement of real property;

22 4. The purchase and installation initially or during major renovation of
23 equipment, facilities, and furnishings of a permanent nature for
24 buildings;~~or~~

25 5. The acquisition of any building to be occupied by any:

26 a. Subdivision of state government as defined in KRS 12.010 or
27 enumerated in KRS 12.020;

1 b. Municipal corporation which exercises its authority on a statewide
 2 basis including, but not limited to, the Kentucky Employees
 3 Retirement System, Teachers' Retirement System of the State of
 4 Kentucky, Kentucky Higher Education Student Loan Corporation,
 5 Kentucky Lottery Corporation, Kentucky Housing Corporation, or
 6 any entity with a governing body whose membership is
 7 substantially similar to the membership of the governing body of a
 8 municipal corporation which exercises its authority on a statewide
 9 basis; and

10 c. Institution of higher education; or

11 **6. The purchase of compensatory mitigation credits solely using funds**
 12 **from Section 16 of this Act from a vendor, including a third party**
 13 **vendor, who acquires or improves the real property on behalf of the**
 14 **Commonwealth for the purpose of satisfying performance of a**
 15 **compensatory mitigation project; and**

16 (c) "Lease" means any lease, lease-purchase, or lease with an option to purchase
 17 of any real property space occupied by:

- 18 1. Any entity listed in paragraph (b)5. of this subsection;
- 19 2. The legislative branch; or
- 20 3. The judicial branch when leased from a private sector landlord;

21 (d) "Equipment" means:

- 22 1. Any major item of equipment, including aircraft;
- 23 2. Any movable furnishing, appurtenance, or other equipment, necessary to
 24 make a building operable; and
- 25 3. Equipment purchased or otherwise acquired, or equipment to be
 26 purchased or otherwise to be acquired, under a lease or lease-purchase
 27 contract or agreement or an arrangement equivalent to a lease or lease-

1 purchase contract or agreement;

2 (e) "Information technology system" means any related computer or
3 telecommunications components that provide a functional system for a
4 specific business purpose and contain one (1) or more of the following:

- 5 1. Hardware;
- 6 2. Software, including application software, systems management software,
7 utility software, or communications software;
- 8 3. Professional services for requirements analysis, system integration,
9 installation, implementation, or data conversion services; or
- 10 4. Digital data products, including acquisition and quality control;

11 (f) "Capital projects" means, regardless of the source of cash or other
12 consideration:

- 13 1. Any capital construction item, or any combination of capital
14 construction items necessary to make a building or utility installation
15 complete, estimated to cost one million dollars (\$1,000,000) or more in
16 cash or other consideration;
- 17 2. Any lease of real property space with an annual rental cost exceeding
18 two hundred thousand dollars (\$200,000);
- 19 3. The use allowance paid by the judicial branch for a real property space
20 pursuant to KRS 26A.090(2) and 26A.115 when the use allowance for
21 the space exceeds two hundred thousand dollars (\$200,000) on an
22 annual basis;
- 23 4. Any item of equipment estimated to cost two hundred thousand dollars
24 (\$200,000) or more in cash or other consideration;
- 25 5. Any lease of an item of movable equipment if the annual cost of the
26 lease is two hundred thousand dollars (\$200,000) or more or if the total
27 cost of the lease-purchase or lease with an option to purchase is two

1 hundred thousand dollars (\$200,000) or more;~~and~~

2 6. Any new acquisition, upgrade, or replacement of an information
3 technology system estimated to cost one million dollars (\$1,000,000) or
4 more in cash or other consideration;

5 7. The purchase of compensatory mitigation credits from a vendor,
6 including a third party vendor, for performance of a compensatory
7 mitigation project which may entail real property held in easement or
8 fee simple interest and any improvements, enhancements, or
9 preservation of streams, wetlands, and habitat located on the property;
10 and

11 8. A compensatory mitigation project, construction project, or other
12 contract to procure full delivery compensatory mitigation or
13 compensatory mitigation credits, solely using funds from Section 16 of
14 this Act; and

15 (g) "Emergency repair, maintenance, or replacement project" means the
16 maintenance, repair, or reconstruction of a capital construction project or the
17 maintenance, repair, or replacement of a major item of equipment that is:

- 18 1. Necessitated by injury or damage resulting from a disaster;
- 19 2. Necessary to maintain government operations or to prevent or minimize
20 injury or damage that could reasonably be expected to result from an
21 impending disaster; or
- 22 3. Necessitated by an unforeseen mechanical breakdown, electrical
23 breakdown, or structural defect that must be corrected to make a facility
24 or item of equipment usable;

25 (h) "Disaster" means a fire, flood, tornado, other natural disaster, riot, enemy
26 attack, sabotage, explosion, power failure, energy shortage, transportation
27 emergency, or other man-caused disaster;

1 (i) "Capital construction funds" means any funds used for capital construction,
2 including, but not limited to, appropriated capital construction funds, agency
3 funds, federal funds, private funds, or funds from any source held by an
4 agency for management or investment purposes; ~~and~~

5 (j) "Entity head" means the Chief Justice of the Supreme Court, the President of
6 the Senate and the Speaker of the House of Representatives, the secretary of
7 the Finance and Administration Cabinet, the president of any university which
8 complies with KRS 164A.585, 164A.595, and 164A.600, the board of trustees
9 of the Kentucky Employees Retirement System, the board of trustees of the
10 Teachers' Retirement System of the State of Kentucky, the board of directors
11 of the Kentucky Higher Education Student Loan Corporation, the board of
12 directors of the Kentucky Lottery Corporation, or the board of directors of the
13 Kentucky Housing Corporation;

14 **(k) "Compensatory mitigation" has the same meaning as Section 1 of this Act;**

15 **(l) "Compensatory mitigation credit" has the same meaning as Section 1 of**
16 **this Act;**

17 **(m) "Compensatory mitigation project" has the same meaning as Section 1 of**
18 **this Act; and**

19 **(n) "Full delivery compensatory mitigation" has the same meaning as Section**
20 **1 of this Act.**

21 (2) Except as provided in subsection (3) of this section, KRS 45.760 to 45.810 shall
22 apply to capital projects and bonds for use by:

- 23 (a) The state government;
- 24 (b) One of its departments or agencies, as defined in KRS 12.010 or enumerated
25 in KRS 12.020;
- 26 (c) A municipal corporation which exercises its authority on a statewide basis,
27 including but not limited to the Kentucky Employees Retirement System,

1 Teachers' Retirement System of the State of Kentucky, Kentucky Higher
2 Education Student Loan Corporation, Kentucky Lottery Corporation, and
3 Kentucky Housing Corporation; and

4 (d) Institutions of higher education.

5 (3) KRS 45.760 to 45.810 shall not apply to:

6 (a) Capital projects or bonds used directly in or for the construction or
7 maintenance of roads, including but not limited to bulldozers, graders, earth
8 movers, and real estate purchased for rights-of-way or for compensatory
9 mitigation projects or compensatory mitigation credits purchased solely
10 using funds from Section 16 of this Act; and

11 (b) Political subdivisions, except for those defined in KRS 12.010, enumerated in
12 KRS 12.020, or created as a municipal corporation which exercises its
13 authority on a statewide basis including, but not limited to, the Kentucky
14 Employees Retirement System, Teachers' Retirement System of the State of
15 Kentucky, Kentucky Higher Education Student Loan Corporation, Kentucky
16 Lottery Corporation, Kentucky Housing Corporation, or any entity with a
17 governing body whose membership is substantially similar to the membership
18 of the governing body of a municipal corporation which exercises its authority
19 on a statewide basis. However, the provisions of KRS 45.750 to 45.810 shall
20 not apply to acquisition or maintenance of any building or land which is
21 purchased as a legal investment by any of the state retirement systems, which
22 is not to be occupied by the retirement system, and which is financed solely
23 with those assets of the retirement system used for investment purposes.

24 ➔Section 9. KRS 45.777 is amended to read as follows:

25 (1) The proceeds from the sale of major items of equipment or real property, purchased
26 in whole or in part with capital construction funds, shall be deposited into the
27 general fund unless federal funding restraints require otherwise.

- 1 (2) The provisions of this section shall not apply to:
- 2 (a) The sale of real property held as right-of-way;
- 3 (b) The sale of equipment by the Transportation Cabinet; ~~{or}~~
- 4 (c) The sale of confiscated firearms; or
- 5 (d) The sale or transfer of title, and any interests therein, to real property
- 6 subject to a compensatory mitigation project or used to procure
- 7 compensatory mitigation credits solely using funds from Section 16 of this
- 8 Act.

9 ➔Section 10. KRS 45.760 is amended to read as follows:

10 The provisions of any other law notwithstanding:

- 11 (1) During any biennium the amount allotted, from all sources, for expenditure on any
- 12 project in the state capital construction program for that biennium shall not exceed
- 13 the estimated cost of the project during that biennium, as shown in any branch
- 14 budget bill enacted by the General Assembly, except as provided in this section and
- 15 KRS 45.770 and 45.780.
- 16 (2) When the General Assembly disapproves a capital project or item of equipment that
- 17 was previously approved, it shall be eliminated as a capital project or major item of
- 18 equipment in the Capital Projects Program. General fund moneys appropriated for
- 19 that project or item of equipment but not allotted, and general fund moneys allotted
- 20 but not expended to the project or equipment account, shall be transferred to the
- 21 capital construction and equipment purchase contingency account in the capital
- 22 construction fund. Agency or federal funds for a disapproved project or item, that
- 23 have been appropriated but unallotted or allotted but unexpended, shall be returned
- 24 to the appropriate agency fund. Road fund moneys for a disapproved project or item
- 25 that have been appropriated but unallotted or allotted but unexpended, shall be
- 26 returned to the Road Fund Surplus Account.
- 27 (3) Capital projects and major items of equipment disapproved under subsection (2) of

1 this section shall be terminated.

2 (4) During any biennium, the amount allotted from all sources for expenditure for the
3 purchase of any major item of equipment shall not exceed the estimated cost of the
4 item as shown in any branch budget bill enacted by the General Assembly and
5 authorizing the purchase, except as provided in subsections (5) and (6) of this
6 section and in KRS 45.770 and 45.780.

7 (5) A major item of equipment to be used for medical, scientific, or research purposes,
8 excluding computer equipment and aircraft, or an expenditure of funds from
9 Section 16 of this Act for a compensatory mitigation project, may be authorized
10 even though it is not specifically listed in any branch budget bill enacted for the
11 current biennium, subject to the following conditions and procedures:

12 (a) Moneys specifically budgeted and appropriated by the General Assembly for
13 another purpose shall not be reallocated for expenditure on the item; moneys
14 utilized shall not jeopardize any existing program and shall not require the use
15 of any current general funds specifically dedicated to existing programs;

16 (b) Funds are available for the purchase and the method of financing the purchase
17 will not require an additional appropriation of state funds to acquire the item;
18 and

19 (c) The purchasing agency shall, within thirty (30) days after making the
20 purchase, report the purchase to the Capital Projects and Bond Oversight
21 Committee. The report shall include a description of the item, the purpose for
22 which it will be used, the necessity for the purchase, and the amount expended
23 for the purchase from each source of funds used.

24 (6) Moneys from any source may be transferred to the allotment account of any capital
25 project authorized by the General Assembly under this section, subject to the
26 following conditions and procedures:

27 (a) The total amount transferred shall not exceed fifteen percent (15%) of the

1 amount authorized by the General Assembly unless:

2 1. The source of funds is private or federal; ~~{or}~~

3 2. *The source of funds is restricted to expenditure solely for the*
4 *performance of compensatory mitigation and the production of*
5 *compensatory mitigation credits under Section 16 of this Act; or*

6 3. An unforeseen decision by a federal or state court or regulatory agency
7 requires the transfer.

8 (b) Moneys specifically budgeted and appropriated by the General Assembly for
9 another purpose shall not be allotted or reallocated for expenditure on the
10 capital project.

11 (c) Moneys utilized shall not jeopardize any existing program and shall not
12 require the use of any current general funds specifically dedicated to existing
13 programs.

14 (d) The relevant entity head, or his designee, shall submit the capital project to the
15 Capital Projects and Bond Oversight Committee at least fourteen (14) days
16 prior to the committee meeting. The submission shall include a written
17 certification to the committee that the transfer, in excess of fifteen percent
18 (15%) of the amount authorized by the General Assembly, is:

19 1. Paid for out of private *funds, restricted funds under Section 16 of this*
20 *Act for performance of compensatory mitigation and production of*
21 *compensatory mitigation credits,* or federal funds; or

22 2. Required by an unforeseen decision by a federal or state court or
23 regulatory agency; and

24 3. Not allotted or reallocated from moneys specifically budgeted and
25 appropriated by the General Assembly for another purpose; and

26 4. Not jeopardizing any existing program and not requiring the use of any
27 current general funds specifically dedicated to existing programs.

- 1 (e) If a capital project is financed with road funds, the cost overruns or scope
2 increases shall be paid out of the highway contingency account established
3 pursuant to KRS 45.247.
- 4 (7) **Except for a capital construction project or major equipment purchase for**
5 **compensatory mitigation funded solely from Section 16 of this Act which shall be**
6 **authorized pursuant to this subsection,** a capital construction project or a major
7 item of equipment may be authorized even though it is not specifically listed in any
8 branch budget bill, subject to the following conditions and procedures:
- 9 (a) Fifty percent (50%) or more of the actual cost shall be funded by federal or
10 private funds, and fifty percent (50%) or less of the actual cost shall be funded
11 by moneys appropriated to the capital construction and equipment purchase
12 contingency account or, if the purpose of the project or equipment is to reduce
13 energy costs, the relevant entity head certifies projected energy cost savings
14 associated with the project or equipment are reasonable and sufficient to
15 produce an aggregate simple payback period, as defined by KRS 56.770, of
16 five (5) years or less;
- 17 (b) Moneys specifically budgeted and appropriated by the General Assembly for
18 another purpose shall not be allotted or reallocated for expenditure on the
19 project or major item of equipment; moneys utilized shall not jeopardize any
20 existing program and shall not require the use of any current general funds
21 specifically dedicated to existing programs; and
- 22 (c) The relevant entity head, or his designee, shall submit the project or major
23 item of equipment to the committee for review as provided by KRS 45.800.
- 24 (8) The capital construction and equipment purchase contingency fund may be used to
25 advance funds to projects authorized to be financed by bonds, to finance feasibility
26 studies for projects which may be contemplated for future funding, or to audit the
27 capital projects program when authorized by the General Assembly.

- 1 (9) On or before October 1, each branch of government shall submit to the committee
2 the following information:
- 3 (a) A complete list and summary description of every capital construction project
4 and major item of equipment not completed as of June 30 of the prior fiscal
5 year; and
- 6 (b) For each project and major item of equipment, as of July 1, of the current
7 fiscal year:
- 8 1. The project phase;
 - 9 2. The project account number, project name, and any other term employed
10 to identify the project or major item of equipment;
 - 11 3. The available balance in the project or major item of equipment account,
12 and any sums considered available for that project or major item of
13 equipment;
 - 14 4. A statement of the transfers of funds to or from the project or major item
15 of equipment account; and, any account to which transfers from each
16 project or major item of equipment has been made;
 - 17 5. The year in which the project or major item of equipment was approved,
18 with specific reference to the legislation by which the project or item
19 was approved;
 - 20 6. Total expenditure on the project or major item of equipment;
 - 21 7. The current estimated completion cost, including the amount required
22 for annual inflation; and
 - 23 8. A statement that additional funds for the completion of the project or
24 major item of equipment are or are not required; and, if required, why
25 sufficient funds for completion are not available; and
- 26 (c) The balance in the appropriated, but unallotted account; and the balance in any
27 account, however designated, that contains appropriated, but unallotted funds

1 for capital construction.

2 (10) When the General Assembly authorizes a capital construction item in the capital
3 construction section of a branch budget bill, the entity head charged with executing
4 the branch budget shall construct the capital construction item according to the
5 requirements set forth in the branch budget bill, supporting documentation
6 considered by the General Assembly, and branch budget records. The entity head
7 shall not deviate from these requirements with regard to:

8 (a) Purpose or location to the extent that the capital construction item no longer
9 meets the identified needs; or

10 (b) Configuration for reasons other than practical accommodation to the
11 construction site or specific program to be accommodated within that capital
12 construction item.

13 ➔Section 11. KRS 45A.030 is amended to read as follows:

14 As used in this code, unless the context requires otherwise:

15 (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint
16 stock company, joint venture, or any other legal entity through which business is
17 conducted;

18 (2) "Change order" means a written order signed by the purchasing officer, directing the
19 contractor to make changes that the changes clause of the contract authorizes the
20 purchasing officer to order without the consent of the contractor;

21 (3) "Chief purchasing officer" means the secretary of the Finance and Administration
22 Cabinet, who shall be responsible for all procurement of the Commonwealth except
23 as provided by KRS Chapters 175, 175B, 176, 177, and 180, **and compensatory**
24 **mitigation projects and credits contracted for under KRS Chapter 150;**

25 (4) **"Compensatory mitigation" has the same meaning as Section 1 of this Act;**

26 (5) **"Compensatory mitigation credit" has the same meaning as Section 1 of this Act;**

27 (6) **"Compensatory mitigation project" has the same meaning as Section 1 of this**

1 Act:

2 (7) "Construction" means the process of building, altering, repairing, improving, or
3 demolishing any public structures or buildings, or other public improvements,
4 including compensatory mitigation projects for streams or wetlands, of any kind
5 to any public real property. It does not include the routine maintenance of existing
6 structures, buildings, or real property;

7 ~~(8)~~~~(5)~~ "Construction manager-agency" means services to assist the purchasing
8 agency manage construction that are procured through a contract that is
9 qualifications-based;

10 ~~(9)~~~~(6)~~ "Construction management-at-risk" means a project delivery method in which
11 the purchasing officer enters into a single contract with an offeror that assumes the
12 risk for construction at a contracted guaranteed maximum price as a general
13 contractor, and provides consultation and collaboration regarding the construction
14 during and after design of a capital project. The contract shall be subject to the
15 bonding requirements of KRS 45A.190;

16 ~~(10)~~~~(7)~~ "Construction manager-general contractor" means a project delivery method
17 in which the purchasing officer enters into a single contract with an offeror to
18 provide preconstruction and construction services. During the preconstruction
19 phase, the successful offeror provides design consulting services. During the
20 construction phase, the successful offeror acts as general contractor by:

- 21 (a) Contracting with subcontractors; and
22 (b) Providing for management and construction at a fixed price with a completion
23 deadline;

24 ~~(11)~~~~(8)~~ "Contract" means all types of state agreements, including grants and orders,
25 for the acquisition, purchase, or disposal of supplies, services, construction, or any
26 other item. It includes: awards; contracts of a fixed-price, cost, cost-plus-a-fixed-
27 fee, contingency fee, or incentive type; contracts providing for the issuance of job or

1 task orders; leases; letter contracts; purchase orders; public-private partnership
2 agreements; and insurance contracts except as provided in KRS 45A.022. It
3 includes supplemental agreements with respect to any of the foregoing;

4 ~~(12)~~~~(9)~~ "Contract modification" means any written alteration in the specifications,
5 delivery point, rate of delivery, contract period, price, quantity, or other contract
6 provisions of any existing contract, whether accomplished by unilateral action in
7 accordance with a contract provision or by mutual action of the parties to the
8 contract. It includes bilateral actions, such as supplemental agreements, and
9 unilateral actions, such as change orders, administrative changes, notices of
10 termination, and notices of the exercise of a contract option;

11 ~~(13)~~~~(10)~~ "Contractor" means any person having a contract with a governmental body;

12 ~~(14)~~~~(11)~~ "Data" means recorded information, regardless of form or characteristic;

13 ~~(15)~~~~(12)~~ "Design-bid-build" means a project delivery method in which the purchasing
14 officer sequentially awards separate contracts, the first for architectural,
15 engineering, or engineering-related services to design the project and the second for
16 construction of the capital project according to the design. The contract shall be
17 subject to the bonding requirements of KRS 45A.185;

18 ~~(16)~~~~(13)~~ "Design-build" means a project delivery method in which the purchasing
19 officer enters into a single contract for design and construction of a capital project.
20 The contract shall be subject to the bonding requirements of KRS 45A.190;

21 ~~(17)~~~~(14)~~ **"Design-build mitigation" has the same meaning as Section 1 of this Act;**

22 ~~(18)~~ "Designee" means a duly authorized representative of a person holding a superior
23 position;

24 ~~(19)~~~~(15)~~ "Document" means any physical embodiment of information or ideas,
25 regardless of form or characteristic, including electronic versions thereof;

26 ~~(20)~~~~(16)~~ "Employee" means an individual drawing a salary from a governmental body,
27 whether elected or not, and any nonsalaried individual performing personal services

1 for any governmental body;

2 ~~(21)~~~~(17)~~ **"Full delivery compensatory mitigation" has the same meaning as Section**
3 **1 of this Act;**

4 ~~(22)~~ **"Goods" means:**

5 ~~(a)~~ **Any tangible property, including all equipment, materials, supplies, and**
6 **other unique and specialty nontangible commodities such as compensatory**
7 **mitigation credits; and**

8 ~~(b)~~ **Unless the context otherwise requires, acquisition of printing;**

9 ~~(23)~~ "Governmental body" means any department, commission, council, board, bureau,
10 committee, institution, legislative body, agency, government corporation, or other
11 establishment of the executive or legislative branch of the state government;

12 ~~(24)~~~~(18)~~ "Meeting" means all gatherings of every kind, including video
13 teleconferences;

14 ~~(25)~~~~(19)~~ "Negotiation" means contracting by either the method set forth in KRS
15 45A.085, 45A.090, or 45A.095;

16 ~~(26)~~~~(20)~~ "Person" means any business, individual, organization, or group of
17 individuals;

18 ~~(27)~~~~(21)~~ "Private partner" means any entity that is a partner in a public-private
19 partnership other than:

20 (a) The Commonwealth of Kentucky, or any agency or department thereof;

21 (b) The federal government;

22 (c) Any other state government; or

23 (d) Any agency of a state, federal, or local government;

24 ~~(28)~~~~(22)~~ "Procurement" means the purchasing, buying, renting, leasing, or otherwise
25 obtaining of any supplies, services, or construction **including compensatory**
26 **mitigation credits, a compensatory mitigation project, or construction work for**
27 **the performance of compensatory mitigation.** It includes all functions that pertain

1 to the procurement of any supply, service, or construction item, including
2 description of requirements, selection and solicitation of sources, preparation and
3 award of contract, and all phases of contract administration;

4 ~~(29)~~~~(23)~~ "Public-private partnership" means a project delivery method for construction
5 or financing of capital projects, as defined in KRS 45.750, or procurement of
6 services, pursuant to a written public-private partnership agreement entered into
7 pursuant to KRS 45A.077 and administrative regulations promulgated thereunder,
8 between:

9 (a) At least one (1) private partner; and

10 (b) The Commonwealth of Kentucky, or any agency or department thereof;

11 ~~(30)~~~~(24)~~ "Purchase request" or "purchase requisition" means that document whereby a
12 using agency requests that a contract be obtained for a specified need, and may
13 include, but is not limited to, the technical description of the requested item,
14 delivery schedule, transportation, criteria for evaluation of solicitees, suggested
15 sources of supply, and information supplied for the making of any written
16 determination and finding required by KRS 45A.025;

17 ~~(31)~~~~(25)~~ "Purchasing agency" means any governmental body that is authorized by this
18 code or its implementing administrative regulations or by way of delegation from
19 the chief purchasing officer to contract on its own behalf rather than through the
20 central contracting authority of the chief purchasing officer;

21 ~~(32)~~~~(26)~~ "Purchasing officer" means any person authorized by a governmental body in
22 accordance with procedures prescribed by administrative regulations to enter into
23 and administer contracts and make written determinations and findings with respect
24 thereto. The term includes an authorized representative acting within the limits of
25 authority;

26 ~~(33)~~~~(27)~~ "Services" means the rendering by a contractor of its time and effort rather
27 than the furnishing of a specific end product, other than reports that are merely

1 incidental to the required performance of services;

2 ~~(34)~~~~(28)~~ **"Service contract" means any contract or agreement for:**

3 **(a) Professional services, including consultant and personal services, for**
4 **stream or wetland compensatory mitigation that requires specialized**
5 **knowledge, experience, and expertise to perform the work that will result in**
6 **the production of compensatory mitigation credits; or**

7 **(b) The direct purchase of compensatory mitigation credits;**

8 **(35)** "Supplemental agreement" means any contract modification that is accomplished by
9 the mutual action of the parties;

10 ~~(36)~~~~(29)~~ "Supplies" means all property, including but not limited to leases of real
11 property, printing, and insurance, except land or a permanent interest in land;

12 ~~(37)~~~~(30)~~ "Using agency" means any governmental body of the state that utilizes any
13 supplies, services, or construction purchased under this code;

14 ~~(38)~~~~(31)~~ "Video teleconference" means one (1) meeting, occurring in two (2) or more
15 locations, where individuals can see and hear each other by means of video and
16 audio equipment; and

17 ~~(39)~~~~(32)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent,
18 set down by handwriting, typewriting, printing, photostating, photographing,
19 magnetic impulse, mechanical or electronic recording, or other form of data
20 compilation.

21 ➔Section 12. KRS 45A.045 is amended to read as follows:

22 (1) The Finance and Administration Cabinet shall serve as the central procurement and
23 contracting agency of the Commonwealth.

24 (a) The cabinet shall require all agencies to furnish an estimate of specific needs
25 for supplies, materials, and equipment to be purchased by competitive bidding
26 for the purpose of permitting scheduling of purchasing in large volume. The
27 cabinet shall establish and enforce schedules for purchasing supplies,

1 materials, and equipment. In addition, prior to the beginning of each fiscal
2 year all agencies shall submit to the Finance and Administration Cabinet an
3 estimate of all needs for supplies, materials, and equipment during that year
4 which will have to be required through competitive bidding.

5 (b) The Finance and Administration Cabinet shall have power, with the approval
6 of the secretary of the Finance and Administration Cabinet, to transfer
7 between departments, to salvage, to exchange, and to condemn supplies,
8 equipment, and real property.

9 (c) The Finance and Administration Cabinet shall attempt in every practicable
10 way to ensure that state agencies are fulfilling their business needs through the
11 application of the best value criteria.

12 (2) The Finance and Administration Cabinet shall recommend regulations, rules, and
13 procedures and shall have supervision over all purchases by the various spending
14 agencies, except as otherwise provided by law, and, subject to the approval of the
15 secretary of the Finance and Administration Cabinet, shall promulgate
16 administrative regulations to govern purchasing by or for all these agencies. The
17 cabinet shall publish a manual of procedures which shall be incorporated by
18 reference as an administrative regulation pursuant to KRS Chapter 13A. This
19 manual shall be distributed to agencies and shall be revised upon issuance of
20 amendments to these procedures. No purchase or contract shall be binding on the
21 state or any agency thereof unless approved by the Finance and Administration
22 Cabinet or made under general administrative regulations promulgated by the
23 cabinet.

24 (3) The Finance and Administration Cabinet shall purchase or otherwise acquire, or,
25 with the approval of the secretary, may delegate and control the purchase and
26 acquisition of the combined requirements of all spending agencies of the state,
27 including, but not limited to, interests in real property, contractual services, rentals

1 of all types, supplies, materials, equipment, and services.

2 (4) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of
3 any interest in real property of the state which is not needed, or has become
4 unsuitable for public use, or would be more suitable to the public's interest if used
5 in another manner, as determined by the secretary of the Finance and
6 Administration Cabinet. The determination of the secretary of the Finance and
7 Administration Cabinet shall be set forth in an order and shall be reached only after
8 review of a written request by the agency desiring to dispose of the property. This
9 request shall describe the property and state the reasons why the agency believes the
10 property should be disposed. All instruments required by law to be recorded which
11 convey any interest in any real property so disposed of shall be executed and signed
12 by the secretary of the Finance and Administration Cabinet and approved by the
13 Governor. Unless the secretary of the Finance and Administration Cabinet deems it
14 in the best interest of the state to proceed otherwise, all interests in real property
15 shall be sold either by invitation of sealed bids or by public auction. The selling
16 price of any interest in real property shall not be less than the appraised value
17 thereof as determined by the cabinet, or the Transportation Cabinet for the
18 requirements of that cabinet.

19 (5) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of all
20 personal property of the state that is not needed, or has become unsuitable for public
21 use, or would be more suitable to the public's interest if used in another manner, or,
22 with the approval of the secretary, may delegate the sale, trade, or other disposal of
23 the personal property. In the event the authority is delegated, the method for
24 disposal shall be determined by the agency head, in accordance with administrative
25 regulations promulgated by the Finance and Administration Cabinet, and shall be
26 set forth in a document describing the property and stating the method of disposal
27 and the reasons why the agency believes the property should be disposed of. In the

1 event the authority is not delegated, requests to the Finance and Administration
2 Cabinet to sell, trade, or otherwise dispose of the property shall describe the
3 property and state the reasons why the agency believes the property should be
4 disposed of. The method for disposal shall be determined by the Division of Surplus
5 Properties, and approved by the secretary of the Finance and Administration
6 Cabinet or his or her designee.

7 (6) The Finance and Administration Cabinet shall exercise general supervision and
8 control over all warehouses, storerooms, and stores and of all inventories of
9 supplies, services, and construction belonging to the Commonwealth. The cabinet
10 shall promulgate administrative regulations to require agencies to take and maintain
11 inventories of plant property, buildings, structures, other fixed assets, and
12 equipment. The cabinet shall conduct periodic physical audits of inventories.

13 (7) The Finance and Administration Cabinet shall establish and maintain programs for
14 the development and use of purchasing specifications and for the inspection, testing,
15 and acceptance of supplies, services, and construction.

16 (8) Nothing in this section shall prevent the Finance and Administration Cabinet from
17 negotiating with vendors who maintain a General Services Administration price
18 agreement with the United States of America or any agency thereof. No contract
19 executed under this provision shall authorize a price higher than is contained in the
20 contract between the General Services Administration and the vendor affected.

21 (9) Except as provided in KRS Chapters 175, 176, 177, and 180, **and KRS Chapter 150**
22 **solely for the purposes of procurement for compensatory mitigation projects and**
23 **compensatory mitigation credits,** and subject to the provisions of this code, the
24 Finance and Administration Cabinet shall purchase or otherwise acquire all real
25 property determined to be needed for state use, upon approval of the secretary of the
26 Finance and Administration Cabinet as to the determination of need and as to the
27 action of purchase or other acquisition. The amount paid for this real property shall

1 not exceed the appraised value as determined by the cabinet or the Transportation
2 Cabinet (for such requirements of that cabinet), or the value set by eminent domain
3 procedure. Subject to the provisions of this code, real property or any interest
4 therein may be purchased, leased, or otherwise acquired from any officer or
5 employee of any agency of the state upon a finding by the Finance and
6 Administration Cabinet, based upon a written application by the head of the agency
7 requesting the purchase, and approved by the secretary of the Finance and
8 Administration Cabinet and the Governor, that the employee has not either himself
9 or herself, or through any other person, influenced or attempted to influence either
10 the agency requesting the acquisition of the property or the Finance and
11 Administration Cabinet in connection with such acquisition. Whenever such an
12 acquisition is consummated, the request and finding shall be recorded and kept by
13 the Secretary of State along with the other documents recorded pursuant to the
14 provisions of KRS Chapter 56.

15 (10) The Finance and Administration Cabinet shall maintain records of all purchases and
16 sales made under its authority and shall make periodic summary reports of all
17 transactions to the secretary of the Finance and Administration Cabinet, the
18 Governor, and the General Assembly. The Finance and Administration Cabinet
19 shall also report trends in costs and prices, including savings realized through
20 improved practices, to the above authorities. The Finance and Administration
21 Cabinet shall also compile an annual report of state purchases by all spending
22 agencies in the state's statewide accounting and reporting system. The report format
23 shall include, but not be limited to, dollar amount, volume, type of purchase, and
24 vendor.

25 (11) For capital construction projects, subject to the provisions of this code and KRS
26 45A.180, the procurement may be on whichever of the following alternative project
27 delivery methods, in the judgment of the secretary of the Finance and

1 Administration Cabinet after first considering the traditional design-bid-build
2 project delivery method, offers the best value to the taxpayer:

3 (a) A design-build basis; or

4 (b) A construction management-at-risk basis.

5 Proposals shall be reviewed by the engineering staff to assure quality and value, and
6 compliance with procurement procedures. All specifications shall be written to
7 promote competition. Nothing in this section shall prohibit the procurement of
8 phased bidding or construction manager-agency services.

9 (12) The Finance and Administration Cabinet shall have control and supervision over all
10 purchases of energy-consuming equipment, supplies, and related equipment
11 purchased or acquired by any agency of the state as provided in this code, and shall
12 promulgate administrative regulations to designate the manner in which an energy-
13 consuming item will be purchased so as to promote energy conservation and
14 acquisition of energy efficient products. Major energy components shall be
15 amortized on a seven (7) to ten (10) years' recovery basis and shall take into
16 consideration the projected cost of fuel. The Finance and Administration Cabinet, in
17 consultation with the Cabinet for Economic Development, shall conduct a thorough
18 economic feasibility analysis on any major energy-using component of at least three
19 million (3,000,000) BTU's per hour heat input and shall issue a certificate of
20 economic feasibility prior to the Finance and Administration Cabinet's purchasing
21 or retrofitting any such component that utilizes any fuel other than coal. The
22 economic feasibility analysis shall consist of life-cycle cost comparisons of a
23 component that would utilize coal and one(s) that would utilize any fuel other than
24 coal. For the analysis, the Finance and Administration Cabinet shall provide
25 detailed estimates of equipment purchase price, installation cost, annual operation
26 and maintenance costs, and usage patterns of energy-using components.

27 ➔Section 13. KRS 45A.050 is amended to read as follows:

- 1 (1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177,
2 and 180, and 150 solely for the purposes of procurement for compensatory
3 mitigation projects and compensatory mitigation credits, all rights, powers, duties,
4 and authority relating to the procurement of supplies, services, and construction,
5 and the management, control, warehousing, sale, and disposal of supplies, services,
6 and construction now vested in or exercised by any state agency under the several
7 statutes relating thereto, are hereby transferred to the secretary of the Finance and
8 Administration Cabinet as provided in this code, subject to the provisions of
9 subsection (2) of this section.
- 10 (2) Unless otherwise ordered by the secretary of the Finance and Administration
11 Cabinet, the acquisition of the following shall not be required through the Finance
12 and Administration Cabinet:
- 13 (a) Works of art for museum and public display;
 - 14 (b) Published books, maps, periodicals, and technical pamphlets; and
 - 15 (c) Services of visiting speakers, professors, and performing artists.
- 16 (3) The Finance and Administration Cabinet shall include in all state agency price
17 contracts for the purchase of materials or supplies a provision that, as approved by
18 the secretary of the Finance and Administration Cabinet, any political subdivision,
19 including cities of all classes, counties, school districts, or special districts, may
20 participate in these contracts to the same extent as the Commonwealth. Any
21 political subdivision may purchase materials and supplies in accordance with a
22 contract for supplies and materials entered into by the Finance and Administration
23 Cabinet for the Commonwealth, including those contracts negotiated by the cabinet
24 with vendors who maintain a General Services Administration price agreement as
25 provided in KRS 45A.045(8). Political subdivisions of the Commonwealth must
26 comply with other provisions of the Kentucky Revised Statutes which require
27 purchase by competitive bidding, before participating in the contract, unless the

1 state contract has been let by competitive bidding, or the contract was negotiated as
2 provided in KRS 45A.045(8).

3 (4) The Finance and Administration Cabinet shall inform the Department for Local
4 Government, which shall then inform the appropriate purchasing agent of each
5 political subdivision interested in participating under this section, of all state agency
6 contracts in effect between the Commonwealth and vendors.

7 (5) The secretary of the Finance and Administration Cabinet shall promulgate
8 administrative regulations necessary for the implementation of this section and
9 necessary to provide that the Commonwealth be reimbursed for any additional
10 expenses incurred by the Commonwealth in allowing political subdivisions to
11 participate in contracts with vendors.

12 (6) The Finance and Administration Cabinet shall comply with all provisions relating to
13 the methods of purchasing in the Kentucky Revised Statutes. This section is not
14 intended to repeal or otherwise affect any provision of the Kentucky Revised
15 Statutes regarding purchasing methods of the Finance and Administration Cabinet.

16 (7) Notwithstanding any other statute to the contrary, all public agencies as defined in
17 KRS 45A.490 shall comply with the provisions for reciprocal preference for
18 resident bidders in KRS 45A.490 to 45A.494.

19 ➔Section 14. KRS 45A.425 is amended to read as follows:

20 (1) A local public agency may sell or otherwise dispose of any personal property which
21 is not needed or has become unsuitable for public use, or which would be suitable,
22 consistent with the public interest, for some other use.

23 (2) A written determination as to need of suitability of any personal property of the
24 local public agency shall be made; and such determination shall fully describe the
25 personal property; its intended use at the time of acquisition; the reasons why it is in
26 the public interest to dispose of the item; and the method of disposition to be used.

27 (3) Surplus or excess personal property as described in this section may be transferred,

1 with or without compensation, to another governmental agency; or it may be sold at
2 public auction or by sealed bids in accordance with KRS 45A.365.

3 (4) In the event that a local public agency receives no bids for surplus or excess
4 personal property, either at public auction or by sealed bid, such property may be
5 disposed of, consistent with the public interest, in any manner deemed appropriate
6 by the local public agency. In such instances, a written description of the property,
7 the method of disposal, and the amount of compensation, if any, shall be made. Any
8 compensation resulting from the disposal of surplus or excess personal property
9 shall be transferred to the general fund of the local public agency.

10 (5) A local board of education may dispose of its surplus technology in accordance with
11 KRS 160.335.

12 (6) As an alternative procedure to that set out in this section, a county may dispose of
13 personal property pursuant to KRS 67.0802.

14 (7) Notwithstanding subsections (1) to (4) of this section, a city, urban-county
15 government, or consolidated local government that has adopted KRS 45A.345 to
16 45A.460 may dispose of surplus property using the procedures in KRS 82.083.

17 **(8) Interests in real property purchased solely with funds under Section 16 of this Act**
18 **may be declared surplus by the Fish and Wildlife Commission pursuant to KRS**
19 **150.023 once compensatory mitigation has been completed and all compensatory**
20 **mitigation credits have been released. Upon approval of the United States Army**
21 **Corps of Engineers, the property may be transferred to another governmental**
22 **agency or local government using the procedures under KRS 82.083.**

23 ➔Section 15. KRS 150.024 is amended to read as follows:

24 **(1)** The department shall have the right:

25 **(a)** To acquire ~~[such]~~ property as may be necessary to carry out the purpose of this
26 chapter; ~~[,]~~ and ~~[it shall have the right]~~

27 **(b) Except for the limitation set forth in subsection (2) of this section, to**

1 exercise~~[of]~~ eminent domain as provided in the Eminent Domain Act of
2 Kentucky.

3 **(2) When property or interests therein are acquired using funds provided under**
4 **Section 16 of this Act for a compensatory mitigation project, the department shall**
5 **only exercise the right of eminent domain if the acquisition meets the**
6 **requirements of subsection (4) of Section 2 of this Act.**

7 ➔Section 16. KRS 150.255 is amended to read as follows:

8 (1) Upon request of any state agency or any other entity, the department may contract
9 with the agency or party to undertake any compensatory mitigation project,
10 including, but not limited to, **the performance of a** wetland or stream mitigation
11 **project or the purchase of compensatory mitigation credits.**

12 (2) The department may establish and manage wetland or stream compensatory
13 mitigation banks, the purpose of which shall be to restore, create, or enhance
14 wetlands and streams as compensatory mitigation where a state agency or other
15 party is required to provide compensatory mitigation, and where the use of banked
16 mitigation is approved by the agency requiring mitigation **and USACE**. The
17 department may create the bank in advance of requests for banked mitigation
18 credits.

19 (3) There is established and created in the State Treasury the "Kentucky Wetland and
20 Stream Mitigation Fund" for the purpose of:

21 **(a)** Restoring, creating, enhancing, or preserving the Commonwealth's wetlands
22 or streams that may be damaged or destroyed due to any project **approved**
23 **under a DA permit requiring compensatory mitigation;**~~[,]~~

24 **(b)** Recovering costs associated with performing these **compensatory mitigation**
25 **projects and producing the required compensatory mitigation credits;**~~[,]~~ and

26 **(c)** Administering these programs.

27 **(4)** The fund shall be deemed a trust and agency fund account and made available

1 solely for the purposes and benefits of the Kentucky wetland and stream
 2 compensatory mitigation projects and the FILO program. Funds may be used to
 3 allow for and make payments whenever remittance is due regardless of the
 4 procurement methodology utilized for the performance of compensatory
 5 mitigation, capital construction projects for compensatory mitigation, or the
 6 development of mitigation credits.

7 (5) The fund may receive state appropriations, gifts, grants, federal funds, revolving
 8 funds, and any other funds both public and private. Money deposited in the fund
 9 shall be disbursed by the State Treasurer upon the request of the commissioner with
 10 the approval of the commission. Any unallocated or unencumbered balance in the
 11 fund shall be invested as provided in KRS 42.500(9), and any income earned from
 12 the investments, along with the unallocated or unencumbered balance in the fund,
 13 shall not lapse.

14 (6) The department shall coordinate all aspects of the performance of compensatory
 15 mitigation required by DA permits or authorizations issued by USACE. The
 16 regulatory requirements for the establishment, operation, and monitoring of a
 17 compensatory mitigation bank or a full delivery compensatory mitigation project
 18 shall vest at the time of the execution of the mitigation banking instrument or the
 19 award of the procurement contract for compensatory mitigation services.

20 ➔Section 17. KRS 382.850 is amended to read as follows:

21 (1) A conservation easement shall not be transferred by owners of property in which
 22 there are outstanding subsurface rights without the prior written consent of the
 23 owners of the subsurface rights.

24 (2) A conservation easement may be acquired by the Department of Fish and
 25 Wildlife Resources, using funds under Section 16 of this Act, or by a mitigation
 26 bank on the surface lands where the mineral and subsurface rights are severed in
 27 order to produce compensatory mitigation credits. If mineral right are

1 subsequently exercised or the surface is disturbed on a compensatory mitigation
2 site as a result of mining activity where compensatory mitigation credits were
3 produced or acquired, the mining entity shall be responsible for:

4 (a) Ensuring the site is restored to its previous condition as described in the site
5 protection instrument; or

6 (b) Paying into the Kentucky Wetland and Stream Mitigation Fund under
7 Section 16 of this Act an amount equal to what it would cost to restore the
8 site.

9 (3) A conservation easement shall not operate to limit, preclude, delete or require
10 waivers for the conduct of coal mining operations, including the transportation of
11 coal, upon any part or all of adjacent or surrounding properties; and shall not
12 operate to impair or restrict any right or power of eminent domain created by
13 statute, and all such rights and powers shall be exercisable as if the conservation
14 easement did not exist.

15 (4) Notwithstanding subsection (3) of this section, the holder of a conservation
16 easement may utilize and enforce the terms of the conservation easement in the
17 Circuit Court of jurisdiction to protect the project areas subject to compensatory
18 mitigation from environmental damage from activities occurring on or adjacent
19 to surrounding properties if:

20 (a) The easement was acquired solely using funds pursuant to Section 16 of
21 this Act or that is being used to produce compensatory mitigation credits;
22 and

23 (b) The site is subject to a site protection instrument approved by United States
24 Army Corps of Engineers.

25 (5) As used in this section, the following terms have the same meaning as in Section
26 1 of this Act:

27 (a) "Compensatory mitigation";

1 (b) "Compensatory mitigation credit";

2 (c) "Compensatory mitigation site";

3 (d) "Mitigation bank"; and

4 (e) "Site protection instrument."

5 ➔Section 18. Whereas the lack of compensatory mitigation credits available to
6 certain areas of the state due to the lack of completed compensatory mitigation projects
7 constrains economic development, an emergency is declared to exist, and this Act takes
8 effect upon its passage and approval by the Governor or upon its otherwise becoming a
9 law.